IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA No.3861 of 1987
Date of Decision: 31.10.2007

Kapoor Singh ...Appellant

Vs.

Mehar Singh & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.K.S.Cheema, Advocate,
for the appellant.
None for the respondents.

Vinod K.Sharma, J. (Oral)

Present Execution Second appeal has been filed against the judgment passed by the learned Additional District Judge, Jalandhar vide which the judgment passed by the learned Executing Court accepting the objections filed by the appellant was set aside.

The decree holder had obtained a decree for a sum of Rs.20,400/- on 20.4.1982 against Darshan Singh son of Dalip Singh. In execution of the said decree the land of Darshan Singh was attached on 1.12.1982. The present appellant along with Piara Singh, brother of Mohinder Singh, Judgment Debtor filed objections against the attachment

on the plea that the land in question was not liable to attachment because they have purchased the land vide sale deed for a consideration of Rs.21,250/- and Rs.17,000/-, respectively.

The decree holder contested the objection petition and a plea was taken that objections have been filed to delay the execution proceedings and that the alleged sale deeds are fabricated and fictitious documents which were procured to defeat the rights of the decree holder.

Learned Executing Court held the appellant-objector to be bona fide purchaser for value without notice of the property under attachment primarily on the ground that the sale deed in favour of the appellant was prior to the date of the institution of the suit and order of attachment of the property. The objections were accepted and the property purchased by the appellant was ordered to be released.

However, in appeal, the finding of the learned Executing Court holding the objector appellant to be bona fide purchaser has been ordered to be reversed. Learned lower appellate court has been pleased to reverse that finding primarily in view of the fact that the pronote and receipts were executed by Darshan Singh in favour of Mehar Singh on 11.7.1978. It was also noticed that the appellant-objector had admitted in his cross-examination that the decree holder had filed a suit with respect to the attached property against the judgment debtor as well as the objector though the said suit was for injunction and was decreed against the objector. In the said suit the objector had taken a plea of ownership on the basis of sale

deed now relied upon by the objector to challenge the attachment of the property. There was clear admission by the objector in the cross-examination that his plea of ownership was declined by the court though it was claimed that appeal against the said judgment and decree was pending before the appellate court. The learned lower appellate court, therefore, in view of the evidence brought on record came to the conclusion that the sale transactions have been set up with a mala fide intention to defeat the right of the decree holder and consequently, reversed the findings.

Mr. K.S.Cheema, learned counsel appearing for the appellant has challenged the findings recorded by the learned lower appellate court primarily on the ground that the sale deed in his favour was executed on 6.10.1980 whereas the suit was instituted on 9.1.1981 i.e. after the purchase by the appellant-objector. It was also contended by the learned counsel for the appellant that the sale in favour of the appellant being prior to the attachment of the property could not be held to be mala fide, as the payment of consideration for sale was duly proved on record.

Though prima facie the argument raised by the learned counsel for the appellant may seem forceful but if seen in depth and tested on the proved facts of the present case the same cannot be accepted. It is not always that sale prior to the attachment is to be held bona fide. As a matter of fact, the decree holder has relied upon the judgment of Bombay High Court in the case of **Abdalla Khan Darya Khan Vs. Purshottam**

Damodar A.I.R. 1948 Bombay 265 wherein Section 53 of the Transfer of Property Act (for short the Act) has been interpreted and it has been held that the creditors whose claim was yet to be proved in court would also be covered under the provisions of Section 53 of the Act.

In the back-ground of settled law it may be noticed here that the suit filed by the decree holder against the objector-appellant for injunction was decreed and his plea of ownership was declined, as was admitted by him in cross-examination. Thus, in a previous suit decided inter se plea of ownership on the basis of sale deed was not accepted.

Clear admission as well as non-cross-examination of the decree holder on this point leaves no manner of doubt that in the previous suit between the parties the sale deed relied upon by the appellant objector was not accepted. In view of the findings of facts recorded, no fault can be found with the judgment of learned lower appellate court in accepting the appeal filed by the decree holder against the acceptance of objections.

There is no merit in this appeal nor does in this appeal any substantial question of law arise for consideration. Finding no merit in the appeal the same is dismissed with no order as to costs.

(Vinod K.Sharma)
Judge

31.10.2007
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